

# EXHIBIT 1 TO AFFIDAVIT OF MICHAEL FREED

INVITATION FOR BIDS  
FOR  
VENDING MACHINE SERVICES

AGENCY: Shawangunk Correctional Facility  
PO Box 750, Quick Road  
Wallkill, New York 12589

BID PROPOSAL NO. X680037

BID OPENING DATE: Monday - November 04, 2002

TIME: 10:00 am

LOCATION: Business Office

GENERAL CONDITIONS

1. SCOPE OF WORK

This Invitation For Bids (IFB) is issued to invite interested parties to submit a formal bid for the awarding of a contract for Vending Machine Services for the **Shawangunk Correctional Facility**. The Contractor agrees to provide all labor, materials, equipment and services necessary for providing the prescribed services at the Shawangunk Correctional Facility in accordance with this IFB and the attached Detailed Specifications.

2. ISSUING AGENCY/OFFICER

The issuing Agency and Officer, as named below, is the sole point of contact for the State of New York and Department of Correctional Services for matters relating to this IFB:

AGENCY: Shawangunk Correctional Facility  
PO Box 750, Quick Road  
Wallkill, NY 12589

OFFICER: Edward Deutsch, Institution Steward  
Telephone: (845) 895-2081 Ext. 3100



3. CONTRACTUAL AGREEMENTS

The IFB, in addition to outlining the requirements of the invitation, is intended to describe the terms and conditions of the Contract, the anticipation of which may aid the proposer in the decision whether or not to submit a bid.

4. CONTRACT DOCUMENTS

The Contract documents consist of this IFB, the Contract Agreement, the Detailed Specifications, Appendix A - Standard Clauses for NYS Contracts, Appendix B - General Specifications for Procurement Contracts, Attachment 1 - Bid Form, and any addenda issued prior to the receipt of bids, and all subsequent modifications and changes issued pursuant to the Contract.

The Contract represents the entire agreement between the parties and supersedes all prior negotiations, representations, and temporary agreements, either written or oral.

The Contract may not be modified except in accordance with its provisions.

5. EXAMINATION OF DOCUMENTS AND SITE

Each bidder must be totally familiar with the required provisions and specifications of this IFB, and conduct a mandatory site visit to be fully cognizant of the scope of work to be performed, the physical conditions of the vending machine sites, the operational restrictions of a correctional facility, and any other factors relating to the provision of the prescribed services. Site visits can be scheduled by contacting Edward Deutsch, Institution Steward.

The Facility will make no allowance or concession to a bidder for any alleged misunderstanding or claimed deception because of quantity, character, location, commission rates, space rental fees, or other conditions.

The bid price is to cover the cost of furnishing all of the said services, materials, equipment and labor as specified in the bid proposal to the satisfaction of the Facility, and the performance of all work set forth in said specifications.

Bidders must be prepared to demonstrate, to the satisfaction of the Facility, a level of experience and workmanship commensurate with the level of service to be provided. The Facility reserves the right to investigate the qualifications of all bidders and their employees on Department of Correctional Services Contracts and previous work projects performed by them to determine the ability of such Contractor and its employees to properly perform the work before awarding the Contract. Bidders must furnish a list of at least three (3) references of customers that they have previously, or are currently, providing vending machine services to.

6. RESPONSE DATE

In order to be considered for selection, bids must be received at the issuing office no later than 11/04/02 at 10:00 am. The Facility assumes no responsibility for delivery delays and will not consider bids arriving after this day and time. Each bid must be submitted on the official Bid Form enclosed (Attachment 1). All blank spaces in the Bid Form must be filled in as noted, and no change shall be made in the phraseology of the proposal or in the items mentioned therein.

Bid forms that are illegible or that contain any omissions, erasures, alterations, additions, or items not called for in the itemized specifications or that contain irregularities of any kind may be rejected as unresponsive to this bid.

The proposal shall be made in the name of the firm or individual under which business is conducted, and shall be signed in ink by a duly authorized person.

All proposals submitted must be in a sealed envelope with the name and address of the bidder, and the Bid Proposal Number on the outside of the envelope.

7. CONTRACT AWARD

The purpose of this Contract for Vending Machine Services is to provide beverages, food items, and snacks for employees and visitors. Accordingly, this Contract will be awarded to the bidder who, after demonstrating the ability to meet the minimum standards of the General Conditions, offers the lowest selling prices which meet the minimum qualifications for quantity and quality, all as set forth in the Detailed Specifications.

Selling prices must include the cost of all equipment, labor, supplies and materials, transportation and handling, space rental fees, commissions, and any other costs associated with the provision of the services specified.

The lowest bid shall be determined by the Facility on the basis of the aggregate monthly total for all items listed on Attachment 1 as calculated by multiplying the estimated monthly sales times the selling price for each item.

The Contract will be awarded to the lowest bidder among responsible and responsive offerers. A Responsible Bidder is defined as a qualified firm with the financial capacity and reliability to provide the services outlined in this IFB.

The Facility reserves the right to request any clarification and any information deemed necessary for proper evaluation of bids. Failure to provide required information may result in rejection of the bid. The Facility also reserves the right to waive non-substantial or non-material variances from Specifications when there is no risk of fraud or favoritism, waive technicalities or omissions, and/or reject all bids and solicit new bids if it is determined to be in the best interest of the state.

8. CONTRACT PERIOD

The term of this contract shall be for a three (3) year period commencing 02/01/03 and ending 01/31/06. Upon mutual agreement, and subject to the approval of the Office of the State Comptroller, this contract may be extended for two (2) additional one-year periods, specifically, 02/01/06 through 01/31/07, and 02/01/07 through 01/31/08.

9. SELLING PRICE INCREASES

The Contractor may, with the consent of the Facility, request selling price increases on an annual basis at least 45 days prior to the requested effective date of the increased prices. Request for price increases must be supported by sufficient documentation that clearly outlines related cost increases incurred by the Contractor during the past 12 months. The Department reserves the right to reject any such request for reasonable cause, and any resulting disagreement will be processed in accordance with Section 15 - Disputes.

10. INSURANCES

The successful bidder agrees that without expenses to the State, it will procure, and will maintain, until final acceptance by the New York State Department of Correctional Services (Department), of the work covered by this proposal and the contract, insurance of the kinds, and in amounts hereinafter provided, in the insurance companies authorized to do such business in the State of New York, covering all operations under this Contract, whether performed by itself or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department, a certificate or certificates, in satisfactory form. Certificates shall state that the policy shall not be changed or canceled until thirty (30) days written notice has been given to the Department and approved by same.

a.) A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Worker's Compensation Law, and the contract, shall be void, and of no effect unless the successful bidder procures such policy, and maintains it until acceptance of the work.

b.) Policies of Bodily Injury Liability and Property Damage Liability Insurance CE the types hereinafter specified, each with limits of liability of not less than \$100,000 for all damages arising out of bodily injury, including death at any time resulting thereof sustained by one person in any one accident, and subject to that limit for that person not less than \$300,000 for all damages arising out of bodily injury, including death at any time resulting thereof sustained by two or more persons in any one accident, and not less than \$25,000 for all damages arising out of injury to or destruction of property during the policy period.

c.) Contractors' liability insurance issued to, and covering the liability of the successful bidder with respect to all work performed by him under this proposal and the contract.

Protective Liability Insurance issued to, and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by his subcontractor, including omissions and supervisory acts of the State. The same monetary limits as set forth in 10b hereof are required.

#### 11. MODIFICATIONS OR WITHDRAWAL OF PROPOSAL

Permission will be given to modify or explain by letter, telegram, or other written notice, any proposal or bid at any time prior to the bid opening. Bids may be withdrawn or canceled before the time designated for opening such bids publicly.

#### 12. TERMINATING FOR CAUSE

If, in the judgment of the Department, the contractor fails or refuses to perform the work in accordance with the Contract or is failing to complete the work within the time provided by the Contract, the Department may take over the work and complete it by contract publicly let or otherwise and may take possession of and utilize in completing the work such of the contractor's materials, equipment, and plant as may be on the site of the work. Whether or not the right to terminate is exercised, the contractor shall be liable for any damage to the State resulting from its failure or refusal to complete the work in accordance with the contract or its failure to complete the work within the time provided by the Contract.

The Contract shall not be so terminated, nor the Contractor charged with resulting damage if:

The delay in completion of the work arises from unforeseen causes beyond the control and without the fault or negligence of the Contractor including but not restricted to acts of God, acts of public enemies, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and subcontractors or suppliers. The Contractor shall notify the Facility in writing of the causes of delay within ten (10) days from the date when the contractor knew or ought to have known of any such delay.

The Facility will ascertain the facts and the extent of the delay and extend the time for completing the work when, in its judgment, the findings of fact justify such an extension, and the findings of fact shall be final and conclusive on the parties, subject to appeal as provided in these general conditions.

If after notice of termination of the Contract, it is determined for any reason that the contractor was not in default or that the delay was excusable, the rights and obligation of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clauses.

The rights and remedies of the State provided in this clause are in addition to any other rights and remedies provided by Law or under this contract.

13. TERMINATION OF CONTRACTOR'S EMPLOYMENT FOR THE CONVENIENCE OF THE STATE OF NEW YORK

The Facility may terminate this contract whenever, in its judgment, the public interest so requires by delivering to the contractor a notice of termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective. Upon receipt of the Notice of Termination, the contractor shall act promptly to minimize the expenses resulting from such termination. The State shall pay the contractor the sum of costs actually incurred up to the effective date of such termination.

In no event shall the contractor's compensation exceed the total contract amount.

14. SUSPENSION OF WORK

The Facility may order the Contractor, in writing, to suspend performance of all or any part of the work for a reasonable period of time as determined by the agency. The order shall contain the reason or reasons for issuance which may include but shall not be limited to the following:

Latent field conditions, substantial program revisions, civil unrest, acts of God.

Upon receipt of a Suspension Order, the Contractor shall, as soon as practicable, cease performance of the work as ordered and take immediate affirmative measures to protect such work from loss or damage.

The Contractor specifically agrees that a suspension, interruption, or delay of the performance of the work pursuant to this proposal shall not increase the cost of performance of the work of this contract.

A Suspension Order, issued by the Facility pursuant to this proposal, shall continue for not more than thirty (30) calendar days. If the contractor is not directed to resume performance of the work affected by the suspension within 30 days, the contract shall be automatically terminated for the convenience of the State and the Contractor shall have the remedies provided therefore.



15. DISPUTES

The Contractor specifically agrees to submit, in the first instance, any dispute relating to the performance of this contract to the Facility which shall reduce its decision to writing and furnish a written copy of its decision to the Contractor. The Contractor must request such decision in writing no more than fifteen (15) days after he/she knew or ought to have known of the facts which are the basis of the dispute.

16. PERMITS AND COMPLIANCE

The Contractor shall obtain, maintain and pay for all permits and licenses legally required and shall give all notices, pay all fees, and comply with all laws, rules and regulations applicable to the work at no additional cost.

17. INSPECTION AND ACCEPTANCE OF THE WORK

The Facility will, from time to time, inspect the performance of services being performed under the terms of the contract.

The Contractor shall, without charge, promptly correct any work the Facility finds does not conform to the contract documents, unless in the public interest, the Facility consents to accept such work with any appropriate adjustment to the contract price.

If the Contractor does not promptly correct rejected work, the Facility may correct such work and charge the cost thereof to the contractor or terminate the contract in accordance with this proposal.

18. RESPONSIBILITY FOR DAMAGES

The Contractor shall faithfully perform and complete all of the work required by the contract and has full responsibility for the following risks:

(a) Loss or damage, direct or indirect, to the work including the building or structure which the work is being performed. The Contractor shall bear all such risks of loss or damage, until all of the work covered by the contract has been finally accepted. In the event of loss or damage, the contractor shall repair, replace, and make good any such loss or damage without additional cost.

(b) Injury to persons, including death or damage to property caused by an occurrence arising out of the performance of this contract for which the Contractor may be legally liable.



The Contractor, however, shall not be responsible for damages resulting from willful acts of State officials or employees or from negligence resulting solely from acts or omissions of the State, its officers or employees. Nothing herein shall vest in third parties any rights of action beyond such as may legally exist irrespective of this section.

19. PREVAILING WAGE RATES

The Contractor agrees to comply with all State and Federal Laws and regulations relating to the payment of prevailing wage rates.

20. APPENDIX A: OMNIBUS PROCUREMENT ACT & MACBRIDE FAIR EMPLOYMENT PRINCIPLES APPLY

During the term of this agreement, the provisions of Appendix A & Appendix B attached hereto are made a part of this agreement as well as the Omnibus Procurement Act and the MacBride Fair Employment Principles apply with the same force herein, and the parties agree to be bound by the terms thereof.

In addition, the contractor specifically agrees to comply with all applicable Federal, State and Local Civil Rights and Human Rights Laws with reference to equal employment opportunities and the provision of services.

21. SAVE HARMLESS CLAUSE

The Contractor agrees and stipulates that it will assume all risks of liability in the performance of services to be provided under this proposal and that it will be solely responsible and liable for damages resulting from all accidents and injuries to person(s) or property. The Contractor agrees to indemnify, keep and hold harmless the State of New York, its officers and employees, from any and all claims for injury or damage to persons or property, arising out of the service to be performed under this proposal, including negligence, active or passive or wrongful or improper conduct of the contractor, its agents or employees. Liability shall not be limited to the insurance coverage herein required.

22. RIGHT TO AUDIT

The Contractor will maintain accurate records and accounts of services performed and money expended under this contract and shall furnish or make available such supplemental accounts, records, or other information as are required to substantiate any estimate, expenditures or reports as required by the Office of the State Comptroller or as may be necessary for auditing purposes or to verify that expenditures were made only for the purpose authorized by this Agreement. Such records and accounts and all supportive documentation shall be kept for at least three (3) years subsequent to dates of final payment hereunder, or until a final audit has been made by the Office of the State Comptroller.

In case all or part of such records are not made available for audit purposes, the Contractor agrees that any cost items claimed but not supported by such records shall be disallowed, or if payment has already been made, the contractor shall, upon written demand of the agency, refund to the agency the amount disallowed.

23. INDEPENDENT CONTRACTOR

The relationship of the Contractor to the State arising out of this contract shall be that of an independent contractor and the Contractor shall not represent that he/she is an employee or official of the State.

24. CONTRACTOR OBLIGATION

The Contractor hereby agrees to the provisions of Section 139(a) and 139(b) of the New York State Finance Law, which requires that upon refusal of a person, when called before a Grand Jury, Head of a State Department, temporary State commission, or other State Agency, or the organized crime task force in the Department of Law which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract: (a) such person, any firm, partnership or corporation of which he/she is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contract with New York State or any public department, agency, or official thereof, for goods, work or services, for a period of five (5) years after such refusal; and (b), any and all contracts made with the State of New York or any public department, agency or official thereof since the effective date of this Law, by such person, and by any firm, partnership, or corporation of which he/she is a member, partner, director or officer may be canceled or terminated by New York State without incurring any penalty or damages on account of such cancellation or termination, but any moneys owed by the State of New York for goods delivered or work done prior to the cancellation or termination shall be paid.

25. VENDOR RESPONSIBILITY QUESTIONNAIRE

Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, director, officer, partner or proprietor, been the subject of:

(If "yes", describe using additional pages.)

- A. An indictment, judgment, conviction, or a grant of immunity, including pending actions, for any business-related conduct constituting a crime under local, state or federal law?

☒ NO ☐ YES

- B. A federal, state, or local government suspension or debarment, rejection of any bid or disapproval of any proposed subcontract, including pending actions, for lack of responsibility, denial or revocation of prequalification or a voluntary exclusion agreement. ✓ NO \_\_\_\_\_ YES
- C. Any federal or state determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful"? ✓ NO \_\_\_\_\_ YES
- D. A consent order with NYS Department of Environmental Conservation, or a federal or state enforcement determination involving a construction-related violation of federal or state environmental laws. ✓ NO \_\_\_\_\_ YES

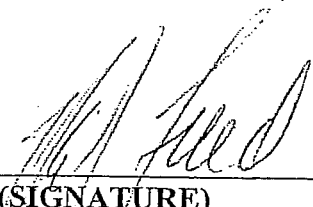
26. **BIDDER CERTIFICATION**

By submission of this bid or proposal, the bidder certified that:

- (a) This bid or proposal has been independently arrived at without collusion with any other bidder or with any competitor, or potential competitor.
- (b) This bid or proposal has not been knowingly disclosed, to any other bidder, competitor or potential competitor.
- (c) No attempt has been or will be made to induce any other person, partnership or corporation to submit a bid or proposal.
- (d) The person signing this bid or proposal certified that he has successfully informed himself regarding the accuracy of the statements contained in this Certification, and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as to the person signing on its behalf.
- (e) The attached hereto (if corporate bidder) is a certified copy of resolution authorizing the execution of this Certificate by the signature of this bid or proposal on behalf of the corporate bidder.

Signature below certified that the bidder has read and fully understands all the provisions of the General Conditions of the Agreement for Vending Machine Services.

Rockland Vending Corp  
COMPANY/CORPORATION NAME

  
(SIGNATURE)

10/27/2002  
(DATE)

Michael Freed  
(PRINTED NAME)

PRESIDENT  
(TITLE)



VENDING MACHINE SERVICES  
DETAILED SPECIFICATIONS

1. FACILITY shall give CONTRACTOR the exclusive right to install, operate and service the automated vending machine dispensing of food, beverages, snacks, candy, etc., at designated locations.
2. FACILITY shall provide space, water, electrical outlets, and plumbing as reasonably necessary for the efficient operation of Vending Machine Services in the designated areas of the facility.
3. CONTRACTOR shall install automatic vending machine equipment for the dispensing of specified items at each designated location on the premises of the FACILITY. Equipment installed must be of such type and quantity as mutually agreed to by the parties, and shall meet the following specifications:
  - (a) All equipment must be of modern design and technology.
  - (b) All equipment shall be of similar construction and color as to provide a uniform and pleasing appearance.
  - (c) All equipment must be maintained in good operating condition. Any vending machine that malfunctions three times in any 60 day period must be repaired to the satisfaction of the FACILITY, or otherwise replaced at the CONTRACTOR'S expense.
  - (d) All equipment is to be maintained in a clean and sanitary condition by regular cleanings, but no less than once weekly.
  - (e) All vending machines shall be equipped with coin mechanisms accepting any combination of nickels, dimes, quarters, and dollar bills.
  - (f) Vending machines installed shall meet the specifications of type, capacity and quantity as outlined in "ATTACHMENT 1", unless amended by a mutual agreement of both parties.
4. CONTRACTOR shall install all equipment at its own expense, and no change in, or exchange of, equipment will be made by the CONTRACTOR without the written approval of the FACILITY. Installation shall be made promptly and carefully, and in such a manner as to minimize Facility inconvenience. Installation of additional equipment due to need or desire may be negotiated with the FACILITY.

5. All vending machines are to be replenished by CONTRACTOR as required, but no less than 5 times: Monday, Wednesday, Friday, Saturday and Sunday \_\_\_\_\_. CONTRACTOR shall rotate foods to ensure freshness.
6. CONTRACTOR shall comply with all applicable State and Local health codes, rules and regulations, and report all cited deficiencies immediately to FACILITY.
7. CONTRACTOR shall service and maintain all equipment on a scheduled basis and keep a record of such maintenance. Maintenance records for any or all vending machines and cafeteria equipment must be made available to the FACILITY upon request. CONTRACTOR must repair any malfunctioning equipment within 24 hours of notification from FACILITY, except that if notified during regular FACILITY business hours, CONTRACTOR must be on-site to make repairs within three hours of such notification.
8. Whenever vending machines are installed or replaced, or at a minimum of once annually, the CONTRACTOR shall provide FACILITY with an inventory of all vending machines operating on FACILITY property. This inventory shall include the following information: (a) type of machine; (b) exact location; (c) manufacturer's make/model; (d) year manufactured; and (e) serial number.
9. FACILITY will take normal and expected precautions to safeguard the CONTRACTOR'S vending machines and equipment. However, any losses incurred in the operation of the vending machines due to theft, fire, accidental damage, vandalism, spoilage, etc., will be the responsibility of the CONTRACTOR.
10. CONTRACTOR shall provide and pay for an adequate number of bonded personnel to provide for the efficient services necessary to meet the terms and conditions of this AGREEMENT. Personnel employed by the CONTRACTOR shall be provided with uniforms or other mutually agreeable means of visual identification. Such personnel shall be and remain solely in the employ of the CONTRACTOR, and shall not be deemed agents or employees of the State of New York, Department of Correctional Services or the FACILITY.
11. CONTRACTOR submitting this bid agrees to furnish and service the vending machines and other equipment as specified in "ATTACHMENT 1". The CONTRACTOR further consents to charge the unit prices listed in "ATTACHMENT 1". Commissions are based on gross sales of all products offered in all vending machines located on the premises of the FACILITY. Gross sales shall be defined as all moneys collected from each machine during the terms of the AGREEMENT, except that all deposits required by law can be subtracted from the gross sales of all applicable products. Payment of commissions must be made monthly by the 10th of the following month.

12. CONTRACTOR shall maintain adequate accounting procedures and detailed records of its operation pursuant to this AGREEMENT. CONTRACTOR shall permit any authorized representative of FACILITY, the Department of Correctional Services, or the Office of the State Comptroller, to inspect any or all records relating to this AGREEMENT.

13. The CONTRACTOR shall furnish food, beverages, snacks, candy, etc., which shall satisfy the stated minimum quality, brand, minimum quantity, or portion size as prescribed in "ATTACHMENT 1", and shall not exceed the selling prices quoted in CONTRACTOR'S formal bid response for a period of one year from the commencement of this AGREEMENT. All items bid per "ATTACHMENT 1" must be offered and available in the prescribed at a minimum of 80% of the time. CONTRACTOR will be permitted to negotiate price increases after the first year for any items for which actual cost increases can be substantiated by sufficient documentation presented to the FACILITY. CONTRACTOR must obtain approval in writing from the FACILITY before implementing any price changes on the vending machines.

14. CONTRACTOR agrees to pay the FACILITY 15% of total gross sales by the 10th of the following month. This payment shall include a detailed explanation per machine of the previous month's meter reading, current month's meter reading, machine number and location. Commissions for all machines located in the Visiting Room shall be paid by separate check made payable to Shawangunk Correctional Facility Occupational Therapy Account and detailed explanation.

15. CONTRACTOR agrees to pay the FACILITY a monthly space rental fee for each vending machine based on the following criteria:

- |   |                  |
|---|------------------|
| • Free standing machine/storage lockers | \$5.00 per month |
| • Machine requiring any utilities       | \$8.00 per month |

The monthly space fee will be paid to the FACILITY by the 10th of the following month. This payment shall be made separately from the monthly commission payments. Microwave ovens and bill changing machines are exempt from the monthly space rental fee.

16. CONTRACTOR is required to install a minimum of 18 vending machines in the type and location prescribed below:

Visiting Room

- (1) Soda Machine
- (1) Hot Drinks
- (1) Candy/Snack
- (2) Sandwich/Cold Food
- (2) Bill Changers
- (2) Microwaves

Employee Cafeteria - Administration Building

- (2) Cold Drinks ( Soda and Juice)
- (1) Hot Drinks
- (1) Candy/Snack
- (1) Sandwich/Cold Food
- (1) Bill Changer
- (1) Microwave

Front Entry - Administration Building

- (1) Cold Drinks (Soda and Juice)
- (1) Candy/Snack